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ARTICLE I.

IN GENERAL

Sec. 2-1. Bonds of officers, employees and agents.

All officers, employees and agents of the county who are required to give bond shall give bond with corporate surety, and the county shall pay the premium therefor, except as to the treasurer, who may give bond as provided in Section 15.1-43 of the Code of Virginia.

Sec. 2-2. Compensation of county officers, employees and agents; disposition of fees.

(a) The chairman and members of the board of supervisors and all other officers, employees and agents of the county shall receive as compensation for their services such sums as may be appropriated therefor in the annual budget or in other ordinances from time to time; provided, that persons serving under contract with the county shall receive such compensation as may be provided in their respective contracts; and provided further, that any person whose compensation is fixed by state law or by a body other than the board of supervisors pursuant to state law shall receive such compensation as fixed by state law or pursuant to state law.

(b) Except as may be specifically provided otherwise by state law, this Code or other ordinances, all fees paid to county officers and employees for services rendered or documents furnished shall belong to the county and shall be paid into the county treasury by the recipients thereof not less frequently than once each month.

Sec. 2-3. Protection of records and other papers.

(a) No book, record, document or paper belonging to the county or any department, office, board, commission or other agency of the county shall be removed from the office of the custodian thereof without his permission, and then only upon the giving of a receipt therefor, except as may be provided otherwise by law in any case, or except upon order of the board of supervisors or its chairman, or in compliance with a valid subpoena duces tecum issued by a court or officer having jurisdiction in the premises.

(b) No person shall, without proper authority, destroy, tamper with, deface or otherwise damage or alter any book, record, document or paper belonging to the county or any department, office, board, commission or other agency of the county, or fail to return any such item of property to its proper custodian after having taken it from its place of custody as authorized in subsection (a) of this section.

Sec. 2-4. Property and property insurance inventories.

(a) The county administrator shall maintain on file in his office an inventory of all real property owned by or leased to the county. This inventory shall be maintained in current status, and during each year shall be revised, as may be appropriate, to show changes in value due to depreciation or to repairs, renovations, etc. For each building or lot such inventory shall also show (1) a brief description, (2) a reference to the deed, device, lease or other instrument whereby the county acquired title to or the use thereof, (3) the department, office or agency charged with custody, (4) the purpose or use, (5) the insurance of all types thereon, together with notes as to premiums payable and anniversary dates, and (6) for property owned by the county and leased to other persons, copies of such leases and appropriate notes as to the revenues derived therefrom.

(b) Each county officer having custody of items of nonexpendable personal property of value greater than five hundred dollars (\$500.00) owned by or leased to the county shall, during each year, prepare in duplicate an itemized inventory of such property, showing for each item (1) its value and a brief description, together with identification (by serial number, where applicable), (2) a reference to the instrument, if any, whereby title of use was acquired, (3) the department, office or agency having custody, (4) the purpose or use, and (5) the insurance of all types, if any, together with notes as to premiums payable and anniversary dates. The original copy of each such inventory shall be filed in the office of the county administrator and the duplicate copy shall be retained on file in the office of the person who prepared it.

(Amended for recodification, 1987)

Sec. 2-5. Use of county-owned personal property for private purposes.

(a) Trucks, machinery and other items of personal property owned by the county shall not be loaned or leased to any person; provided, that the board of supervisors may by resolution provide rules and regulations whereby the county administrator may authorize specified items of county-owned personal property to be used for private purposes when such use would not interfere with or delay any county work or project, upon the payment of specified charges, and subject to such terms and conditions as may be stipulated by the county administrator. If and when any such resolution is in effect, the provisions thereof and the provisions of this subsection shall be deemed to be incorporated in and made a part of any authorization made thereunder by the county administrator, and all persons for whose benefit any county-owned personal property is used shall be bound thereby and shall likewise be bound by the stipulations of the county administrator.

(b) This section shall not be construed so as to limit the authority of the board of supervisors to authorize the use of county-owned personal property by municipalities, state agencies or other political subdivisions under mutually agreed upon terms and conditions.

Sec. 2-6. Reports by departments, offices, etc.

It shall be the responsibility of all county department heads or other responsible representatives of all county departments, offices, divisions, boards, commissions and agencies to inform the board of supervisors on a regular basis as to their respective affairs and activities, as may be required from time to time by the board of supervisors.

(Amended for recodification, 1987)

Sec. 2-6.1. Fee for bad checks.

There shall be a fee of thirty-five dollars (\$35.00) due from any person or entity uttering, publishing or passing any check or draft for payment of county taxes or any other sums due the county which are subsequently returned for insufficient funds or because there is no account or the account has been closed or which is referred to maker.

(P.C. Ord. No. 04-08, 8-25-04)

ARTICLE II.

BOARD OF SUPERVISORS

DIVISION 1.

GENERALLY

Sec. 2-7. Agenda for regular and adjourned meetings.

The clerk of the board of supervisors shall prepare and make available to each member of the board of supervisors a detailed agenda at least one (1) day prior to each regular or adjourned meeting of the board; and

no such agenda shall be departed from at the meeting to which it relates except by majority vote of the supervisors present at the meeting.

Sec. 2-8. Regular meetings.

The regular meetings of the board of supervisors shall be held on the days, times and at the places established at the annual meeting. The annual meeting shall be the first meeting held after the newly elected members of the governing body shall have qualified and the first meeting in the corresponding month of each succeeding year.

When a regular meeting of any month falls on a legal holiday the regular meeting in such month shall be held on the next following business day. The board of supervisors may also provide by resolution at any meeting, that such regular meeting shall be held at a different time or place, and it shall be the duty of the clerk of the board to give timely notice thereof to all members of the board and to give other notices as provided by law.

(6-26-78; amended for recodification, 1987)

Sec. 2-9. Disorderly conduct at meetings.

It shall be unlawful for any person to willfully interrupt or unnecessarily disturb any meeting of the board of supervisors, or any committee, division, agency, officer or other authority thereof, or being intoxicated, to disturb such a meeting, whether willfully or not, to cause any unnecessary disturbances therein, by force, shouting or any other action calculated to disrupt such meeting, or to refuse to obey any ruling of the presiding officer of such meeting relative to the orderly process thereof. Any person who violates this section shall be punished by fine not exceeding one thousand dollars (\$1,000.00), or by confinement in jail not exceeding twelve (12) months, or by both, in the discretion of the jury or of the court trying the case without a jury.

Sec. 2-10. To act as finance board.

The board of supervisors hereby abolishes the finance board of the county and all authority, powers and duties of said finance board shall vest in the board of supervisors.

(8-16-54; amended for recodification, 1987)

DIVISION 2.

RULES OF PROCEDURE

Sec. 2-11. Establishment; purpose.

In order to carry out the business of the board of supervisors in the best interest of the citizens of the county, the rules of procedure set out in the following sections of this division are hereby established to govern the conduct of the members of the board of supervisors and persons attending meetings of the board of supervisors.

Sec. 2-12. Appointment of committee members.

The chairman of the board of supervisors shall appoint on an annual basis committee members to any permanent or temporary committee established by the board. The chairman shall make his committee appointments within ten (10) days after passage by the board of supervisors of a resolution creating a committee.

(Amended for recodification, 1987)

Sec. 2-13. Calling for motion on item of business on agenda; continuing item of business.

The chairman or any member of the board of supervisors may call for a motion on any item of business appearing on the agenda or any item that has been introduced to the agenda. In the event that no motion is made on any item of business appearing on the agenda or any item that has been introduced to the agenda, the chairman of the board of supervisors shall have the privilege of continuing any item of business to the next regular meeting.

Sec. 2-14. Verbal recommendations of county administrator.

A member of the board of supervisors may call on the county administrator for a verbal recommendation at any meeting of the board of supervisors.

Sec. 2-15. Motion need not be seconded; substitute motion.

A motion made at a meeting of the board of supervisors shall not require a second. Only one (1) substitute motion shall be permitted after a motion has been made on any item of business coming before the board.

(Amended for recodification, 1987)

Sec. 2-16. Appearance of person before the board.

The chairman of the board of supervisors may recognize any person who appears at a board meeting if he deems it in the best interest of the county. The chairman of the board may direct the county administrator to add to the next agenda any item which may grow out of the appearance before the board of such person.

Sec. 2-17. Public hearings.

- (a) The order of presentation shall be as follows, unless varied by the chairman:
 - (1) Staff report.
 - (2) Applicant's presentation.
 - (3) Comments, statements or presentations from members of the public. If a planning or zoning matter, those who are in support of the matter before the board will speak first; those who have questions or concerns will speak next; those who are opposed will close the public comment period.
 - (4) Questions from members of the board.

(b) The initial presentation by the applicant shall be limited to ten (10) minutes. Additional time may be granted at the discretion of the chairman.

(c) Each speaker shall be limited to three (3) minutes, whether speaking on behalf of a group or as an individual. Additional time will be granted at the discretion of the chairman.

(d) When a large group is anticipated, a speakers' sign-up sheet will be located outside the hearing room. Speakers arriving after the commencement of the hearing will be recognized at the discretion of the chairman.

(e) Repetitive testimony is discouraged.

(f) All comments shall be directed to the members of the board of supervisors. Debate is prohibited.

(g) Public remarks shall be confined to the matter under discussion and shall be relevant. The chairman shall have the authority to end a presentation that violates these rules.

(h) Following discussion of all matters considered in the public hearing, the members will consider one (1) of three (3) actions regarding each matter:

Approval (with conditions, as applicable);

Denial; or

Table for further review.

(i) Once the public comment period has been closed, no further public input will be permitted unless clarification is requested by a board member. The response shall address only those questions raised by the member.

(P.C. Ord. No. 10-93, 9-22-93; P.C. Ord. No. 96-11, 7-10-96)

Editors Note: P.C. Ord. No. 10-93, adopted September 22, 1993, has been codified herein as superseding the provisions in former § 2-17. Former § 2-17 pertained to persons speaking to board and carried no history note.

Sec. 2-18. Limitation on debate.

(a) Debate may be limited by the vote of a majority of members of the board of supervisors cast prior to the beginning of the debate.

(b) After a motion to limit debate, debate shall be limited to two (2) minutes per member which may be accumulated to one (1) or more members not to exceed the total of ten (10) minutes.

(Amended for recodification, 1987)

Sec. 2-19. Amendment of rules.

The rules set out in this division may be amended by majority vote of the members of the board of supervisors.

(Amended for recodification, 1987)

ARTICLE III.

ORDINANCES

Sec. 2-20. Ordinances.

All ordinances duly adopted by the board of supervisors may become a part of the Rockingham County Code.

(Amended for recodification, 1987)

Secs. 2-21, 2-22. Reserved.

Sec. 2-23. Repeal not to revive former ordinances.

When an ordinance which has repealed another shall itself be repealed, the previous ordinance shall not be revived without express words to that effect.

ARTICLE IV.

PLANNING COMMISSION

Sec. 2-24. Created; composition, election and appointment of members; term of members; filling vacancies.

A county planning commission is hereby established, which shall consist of five (5) members, one (1) from each election district within the county, as may be determined from time to time by the board of supervisors as vacancies in the membership of the commission occur. The members shall be appointed by the board of supervisors for a term of not more than four (4) years as may be provided by the board of supervisors at the time of any such appointment; provided, that each member shall serve until his successor is appointed and qualifies. The members shall be eligible for appointment to no more than two (2) consecutive four-year terms. Vacancies which occur by any cause other than expiration of the appointed term shall be filled for the unexpired term only.

(P.C. Ord. No. 17-90, 11-14-90; P.C. Ord. No. 96-5, 2-28-96)

Sec. 2-25. Removal from office; compensation of members.

(a) Any member of the planning commission may be removed by the board of supervisors for malfeasance in office; provided, that such removal may be made only after a public hearing at which such member is given an opportunity to appear and be heard on the charges against him.

(b) All members of the planning commission shall be compensated at a rate established by the board of supervisors and shall be reimbursed for actual expenses incurred as members of the planning commission.

(P.C. Ord. No. 82-6, 7-26-82)

Sec. 2-26. Powers and duties generally.

The planning commission shall have all the functions, powers and duties prescribed for local planning

commissions by state law.

ARTICLE V.

RECREATION COMMISSION

Sec. 2-27. Created; purpose.

The board of supervisors hereby establishes a commission known as the county recreation commission for the purpose of making and implementing policy in all matters pertaining to recreation areas, programs, and projects in the county, subject to the review and approval of the board of supervisors.

(Reso. 8-13-68; P.C. Ord. No. 79-4, 5-11-79)

Sec. 2-27.1. Appointment.

The director of the department of parks and recreation shall be appointed by the county administrator in accordance with Article 1.1 Section III of the personnel management system of the county.

(P.C. Ord. No. 79-4, 5-11-79)

Sec. 2-27.2. Operating budget.

The county recreation commission shall prepare and recommend to the board of supervisors an annual operating budget.

(P.C. Ord. No. 79-4, 5-11-79)

Sec. 2-27.3. Capital improvement budget.

The county recreation commission shall recommend to the board of supervisors annually a budget for capital improvements.

(P.C. Ord. No. 79-4, 5-11-79)

Sec. 2-27.4. Reserved.

(P.C. Ord. No. 79-4, 5-11-79)

Sec. 2-28. Appointment, number, terms and compensation of members.

(a) A county recreation commission is hereby established, which shall consist of ten (10) members appointed by the board of supervisors as vacancies in the membership occur. Each member shall be appointed for a term not to exceed four (4) years as may be provided the board of supervisors at the time of appointment; provided, that each member shall serve until his successor is appointed unless the board of supervisors determines not to fill a vacancy occurring by the reason of the expiration of a term of office. Vacancies which occur by any cause other than expiration of the term for which appointed shall, if the vacancy is to be filled, be filled for the unexpired term only.

(b) All members of the recreation commission shall be compensated at a rate established by the board of supervisors and shall be reimbursed for actual expenses incurred as members of the recreation

commission.

(Reso. 8-13-68; P.C. Ord. No. 79-4, 5-11-79)

Sec. 2-29. Meetings; officers; bylaws.

The county recreation commission shall hold regular monthly meetings, make its own bylaws, elect its own officers and call its own meetings.

(Reso. 8-13-68; P.C. Ord. No. 79-4, 5-11-79)

ARTICLE VI.

HIGHWAY SAFETY COMMISSION

Sec. 2-30. Established: composition; duties.

There is hereby established for the county, a highway safety commission, which commission shall consist of ten (10) members, of whom one (1) shall be a member of the board of supervisors. The commission shall meet as necessary and make studies and reports in regard to plans and programs for the improvement of highway safety within the county. Such highway safety commission shall conduct its affairs, perform such duties and make such reports as are provided for in Section 2.1-64.19 through 2.1-64.21, Code of Virginia, as amended.

(Amended for recodification, 1987)

ARTICLE VII.

INDUSTRIAL DEVELOPMENT AUTHORITY

Sec. 2-31. Created.

There is hereby created a political subdivision of the state, to be known as the Industrial Development Authority of Rockingham County, with such public and corporate powers as are set forth in the Industrial Development and Revenue Bond Act.

(11-11-72, § 1)

ARTICLE VIII.

RESERVED

Secs. 2-32--2-54. Reserved.

ARTICLE IX.

DISPOSAL OF UNCLAIMED PERSONAL PROPERTY

Sec. 2-55. Definitions.

As used herein, "unclaimed personal property" shall be any personal property belonging to another which has been acquired by a law enforcement officer pursuant to his duties, which is not needed in any criminal prosecution, which has not been claimed by its rightful owner and which the state treasurer has indicated will be declined if remitted under the Uniform Disposition of Unclaimed Property Act (Sections 55-210.1 et seq. of the Code of Virginia, 1950, as amended).
(P.C. Ord. No. 82-7, 8-23-82)

Sec. 2-56. Authority for sale.

Any law enforcement agencies located in or operating within the county may offer at public sale any unclaimed personal property which has been in its possession and unclaimed for a period of more than sixty (60) days; provided, such law enforcement agency has made reasonable attempts to notify the rightful owner of the property, obtained from the commonwealth's attorney of Rockingham County, in writing, a statement advising that such unclaimed personal property is not needed in any criminal prosecution and has published such sale as hereinafter provided.
(P.C. Ord. No. 82-7, 8-23-82)

Sec. 2-57. Public sale and proceeds disposition.

The law enforcement agency shall cause to be published in a newspaper of general circulation in Rockingham County, once a week for two (2) successive weeks, notice that there will be a public sale of such unclaimed personal property, with a general description of such property in such public notice, together with the date, time and place of sale. The costs of such advertising, removal, storage, investigation as to ownership and liens, and notice of sale shall be paid from the proceeds of sale. The balance of the proceeds of sale shall be paid to the former owner of such unclaimed personal property, if proof of ownership and a claim for the proceeds of such sale is made to such law enforcement agency within sixty (60) days of such sale; provided, however, if such proof is not made within such sixty (60) days, then all of such remaining funds shall be deposited in the general fund of Rockingham County. No claim shall be made nor any suit, action or proceeding shall be instituted for the recovery of any such funds after three (3) years from the date of sale; provided, however, if any such proof of ownership and claim for the proceeds is made within such three (3) year period, Rockingham County shall pay such remaining proceeds of sale of such unclaimed personal property to the former owner thereof without interest or any other charges.
(P.C. Ord. No. 82-7, 8-23-82)

Secs. 2-58--2-70. Reserved.

ARTICLE X.

CENTRALIZED PROCUREMENT

DIVISION 1.

GENERALLY

Sec. 2-71. Definitions.

When used in this article, the following words and phrases shall have the meaning given in this section:

Blind trust. An independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.

Board of supervisors. The governing body of Rockingham County, Virginia.

Brand name or equal specification. A specification limited to one (1) or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet county requirements and which provides for the submission of equivalent products.

Brand name specification. A specification limited to one (1) or more items by manufacturers' names or catalogue numbers.

Business. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.

Change order. A written order issued by the county administrator directing the contractor to make changes, which are authorized by the contract.

Confidential information. Any information which is available to an employee only because of the employee's status as an employee of this county and is not a matter of public knowledge or available to the public on request.

Construction. Building, altering, repairing, improving, or demolishing any structure, building, or highway, and any draining, dredging, excavating, grading, or similar work upon real property.

Construction management contract. A contract in which a party is retained by the county, to coordinate and administer contracts for construction services for the benefit of the county, and may also include, if provided in the contract, the furnishing of construction services to the county.

Contract. All types of county agreements, between the County and a non-governmental source for the procurement of goods, services, insurance, or construction that is enforceable by a court of law.

Contract modification. Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provision of any contract accomplished by mutual action of the parties of the contract.

Contractor. Any person having a contract with the county or a using agency thereof.

Cost analysis. The evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.

Cost data. Factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the

contract.

Cost-reimbursement contract. A contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this article, and a fee or profit, if any.

County. The County of Rockingham, Virginia.

County administrator. The chief administrative officer of Rockingham County.

Direct or indirect participation. Involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

Disadvantaged business. A small business which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.

Employee. An individual drawing a salary or wages from the county, whether elected or not; any noncompensated individual performing personal services for the county or any department, agency, commission, council, board or any other entity established by this county, whether elected or not.

Goods. All material, equipment, supplies, printing and automated data processing hardware and software.

Governing body. The board of supervisors of Rockingham County.

Immediate family. A spouse, parent, son, daughter, brother, sister, grandparents, grandchild, step-children, step-parents, guardian, and the same relatives of spouse.

Informality. A minor defect or variation of a bid or proposal from the exact requirements of the invitation to bid, or the request for proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

Insurance. A contract whereby, for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by specified perils.

Invitation to bid. All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids. No confidential or proprietary data shall be solicited in any invitation for bids.

Local bidder. Any bidder whose business is located within the county.

Nominal value. Small or slight in amount in comparison to what might properly be expected, but in no case to be more than twenty-five dollars (\$25.00).

Official responsibility. The administrative or operating authority, whether immediate or final, to initiate,

approve, disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom.

Nonprofessional services. Any services not specifically defined as "professional services" in this section.

Pecuniary interest arising from the procurement. A material financial interest as defined in the Virginia Conflict of Interests Act, provided in Title 2.1 of the Code of Virginia, 1950, as amended.

Person. Any business, individual, union, committee, club, other organization, or group of individuals,

Procurement transaction. All functions that pertain to the obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Professional services. Work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, or professional engineering.

Price analysis. The evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.

Pricing data. Factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime contract and subcontract prices.

Public body. Any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this article.

Purchasing agent. The employee appointed by the county administrator to perform the duties as outlined in this chapter.

Qualified products list. An approved list of goods, services, or construction items described by model or catalogue number, which prior to competitive solicitation, the county has determined will meet the applicable specification requirements.

Request for proposal. All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

Responsible bidder or offeror. A person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance, and who has been prequalified, if required.

Responsive bidder. A person who has submitted a bid which conforms in all material respects to the invitation to bid.

Services. Any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

Sheltered workshop. A work-oriented rehabilitative facility with a controlled working environment and individual goals which utilizes work experience and related services for assisting the handicapped person to progress toward normal living and a productive vocational status.

Small business. An enterprise which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation.

Specification. Any description of the physical or functional characteristics, or of the nature of a good, service or construction item. It may include a description of any requirement for inspecting, testing, or preparing a good, service or construction item for delivery.

Using agency. Any department, agency, commission, bureau, or other unit in the county government requiring goods, services, insurance or construction as provided for in this article.
(P.C. Ord. No. 83-1, § 106.00, 1-10-83; P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-72. Purpose.

The purpose of this article is to provide for the fair and equitable treatment of all persons involved in public purchasing by the county, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.
(P.C. Ord. No. 83-1, § 102.00, 1-10-83; P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-73. Application.

This article applies to contracts for the procurement of goods, services, insurance, and construction entered into by the county involving every expenditure for public purchasing irrespective of its source. Except, when the procurement involves the expenditure of federal assistance or contract funds, the procurement shall be conducted in accordance with any applicable mandatory federal law and regulation which are not reflected in this article. Nothing in this chapter shall prevent any public agency from complying with the terms and conditions of any grant, gift, or bequest which are otherwise consistent with law.
(P.C. Ord. No. 83-1, § 103.00, 1-10-83; P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-74. Penalties for violations of Divisions 1 through 5.

Violation of any section in Division 1 through Division 5 of this article shall constitute a misdemeanor and shall be punishable by a fine not exceeding five hundred dollars (\$500.00), or confinement in jail for a period not exceeding twelve (12) months, or both.
(P.C. Ord. No. 83-1, § 601.00, 1-10-83; P.C. Ord. No. 97-15, 8-27-97)

Secs. 2-75--2-80. Reserved.

DIVISION 2.

OFFICE OF THE PURCHASING AGENT

Sec. 2-81. Establishment.

There is hereby created a purchasing system to operate under the direction and supervision of the county administrator, or his designee.

(P.C. Ord. No. 83-1, § 201.01, 1-10-83; P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-82. Appointment.

The purchasing agent shall be appointed by the county administrator in accordance with Article 1.1 of Section III of the personnel management system for the county.

(P.C. Ord. No. 83-1, § 201.02, 1-10-83; P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-83. Bond.

The purchasing agent shall give an official bond, to be approved by the county attorney in the sum of ten thousand dollars (\$10,000.00). The premium for such bond shall be paid out of the general operating fund of the county.

(P.C. Ord. No. 83-1, § 201.03, 1-10-83; P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-84. Authority.

Subject to the guidelines and prohibitions of this article, as adopted by the board of supervisors, the purchasing agent shall have authority to procure goods, services, insurance and construction, as well as the management and disposal of supplies.

(P.C. Ord. No. 83-1, § 202.01, 1-10-83; P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-85. Duties.

In accordance with this article, and subject to the supervision of the county administrator, the purchasing agent shall:

- (1) Purchase or supervise the purchasing of all goods, services, insurance and construction needed by this county;
- (2) Exercise direct supervision over the county's central stores and general supervision over all other inventories of goods belonging to the county;
- (3) Sell, trade or otherwise dispose of surplus goods belonging to the county; and
- (4) Establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the public agencies using the goods, services, and construction.

(P.C. Ord. No. 83-1, [I 202.02, 1-10-83)

Sec. 2-86. Operational procedures.

Consistent with this article, and with the approval of the county administrator, the purchasing agent may adopt operational procedures relating to the execution of the duties assigned.
(P.C. Ord. No. 83-1, § 202.03, 1-10-83; P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-87. Approval of purchases when absent.

In the absence of the purchasing agent, purchases shall be approved by the county administrator or his designee.
(P.C. Ord. No. 83-1, § 202.04, 1-10-83; P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-88. Delegation.

With the approval of the county administrator, the purchasing agent may delegate authority to purchase certain supplies, services, or construction items to other county officials, if such delegation is deemed necessary for the effective procurement of those items.
(P.C. Ord. No. 83-1, § 202.05, 1-10-83; P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-89. Unauthorized purchases.

Except as herein provided no official, elected or appointed, or any employee shall purchase or contract for any goods, services, insurance or construction within the purview of this article. Any purchase order or contract made contrary to the provisions hereof is not approved and the county shall not be bound thereby.
(P.C. Ord. No. 83-1, § 202.06, 1-10-83; P.C. Ord. No. 97-15, 8-27-97)

Secs. 2-90--2-95. Reserved.

DIVISION 3.

COOPERATIVE PROCUREMENT

Sec. 2-96. Conditions for use.

The county may participate in, sponsor, conduct, or administer a cooperative procurement agreement with one or more other public bodies for the purpose of combining requirements to increase efficiency or reduce administrative expenses. Any public body which enters into a cooperative procurement agreement with the county shall comply with the policies and procedures adopted by this article.
(P.C. Ord. No. 83-1, § 301.00, 1-10-83; P.C. Ord. No. 97-15, 8-27-97)

Secs. 2-97--2-99. Reserved.

DIVISION 4.

CONTRACT FORMATION AND METHODS OF SOURCE SELECTION

Sec. 2-100. General conditions.

(a) *Conditions for use.* All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this division unless otherwise authorized by this article.

(b) *Public access to procurement information.* Except as provided herein, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act as contained in Title 2.1 of the Code of Virginia, 1950, as amended. Cost estimates relating to a proposed transaction prepared by or for the county shall not be open to public inspection. Any bidder or offeror, upon request, shall be afforded the opportunity to inspect bid and proposal records within a reasonable time after the opening of bids or proposals but prior to award, except in the event that the county decides not to accept any of the bids or proposals and reopen the contract. Otherwise, bid and proposal records shall be open to public inspection only after award of the contract. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder, offeror or contractor must invoke the protections of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary.

(c) *Employment discrimination by contractor prohibited.* Every contract of over ten thousand dollars (\$10,000.00) shall include the provisions in (1) and (2) below:

(1) During the performance of this contract, the contractor agrees as follows:

- a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

(2) The contractor will include the provisions of the foregoing paragraphs (a), (b) and (c) in every subcontract or purchase order of over ten thousand dollars (\$10,000.00), or that the provisions will be binding upon each subcontractor or vendor.

(d) *Prequalification of bidders or offerors.*

(1) (a)

The purchasing agent is authorized to prequalify bidders or offerors prior to any solicitation of bids or proposals whether for goods, services, insurance or construction, by requiring prospective bidders or offerors to submit such information as the county shall deem appropriate, including samples, financial reports, and references; provided, however, that opportunity to prequalify shall be given to any prospective bidder or offeror who has not been suspended or debarred under this article. Any prequalification procedure shall be established in writing and sufficiently in advance of its implementation to allow potential contractors a fair opportunity to complete the process.

(b) Any prequalification of prospective contractors for construction shall be pursuant to a prequalification process for construction projects adopted by the board of supervisors. Such process shall be consistent with the provisions of this subsection.

The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to the criteria. Such form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of Section 201 (b).

In all instances in which the county requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.

At least thirty (30) days prior to the date established for submission of the bids or proposals under the procurement of the contract for which the prequalification applies, the county shall advise in writing each contractor which submitted an application whether the contractor has prequalified. In the event that a contractor is denied prequalification, the written notice shall state the reasons for denial and the factual basis for such reasons.

A decision by the county purchasing agent denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided under Section 2-131.

The purchasing agent may deny prequalification to a contractor only if the agent finds one of the following:

1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contractor, evidence that the contractor can acquire a surety

bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the county shall be sufficient to establish the financial ability of such contractor;

2. The contractor does not have appropriate experience to perform the construction project in question;
 3. The contractor or any officer, director or owner thereof has had judgments entered against him within the past ten (10) years for breach of contracts for governmental or nongovernmental construction, including, but not limited to, design build or construction management;
 4. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with the county without good cause. If the county has not contracted with a contractor in any prior construction contracts, the county may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. The county may not use this subdivision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond,
 5. The contractor or any officer, director, owner, project manager, procurement manager, or chief financial official thereof has been convicted within the past ten (10) years of a crime related to governmental or nongovernmental contracting, including, but not limited to, a violations of (i) Article 4 (section 11-72 et. seq.) of Title 11 of the Code of Virginia, as amended, (ii) the Virginia Government Frauds Act (section 18.2-498.1 et. seq. of the Code of Virginia, as amended), (iii) Chapter 4.2 (section 59.1-68.6 et. seq.) of Title 59.1 of the Code of Virginia, as amended, or (iv) any substantially similar law of the United States or another state;
 6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of this state or another state, or agency of the federal government; and
 7. The contractor failed to provide to the county in a timely manner any information requested by the governing body relevant to subdivision 1 through 6 of this subsection.
- (2) The purchasing agent may refuse to prequalify any prospective bidder or offeror provided that written reasons for refusing to prequalify are made a part of the record in each case.
- (3) In considering any request for prequalification for non-construction contracts, the purchasing

agent shall determine whether there is reason to believe that the bidder or offeror possesses the management, financial soundness, and history of performance which indicate apparent ability to complete successfully the plans and specifications of the invitation to bid or request for proposal.

- (4) Prequalification of a bidder or offeror shall not constitute a conclusive determination that the bidder or offeror is responsible, and such bidder or offeror may be rejected as nonresponsible on the basis of subsequently discovered information.
- (5) Failure of a bidder or offeror to prequalify with respect to a given procurement shall not bar the bidder or offeror from seeking prequalification as to future procurements, or from bidding or proposing on procurements which do not require prequalification.

(e) *Use of brand names.* Unless otherwise provided in the invitation to bid or request for proposal, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer names; it conveys the general style, type, character, and quality of the article desired, and any article which the public body in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

(f) *Comments on specifications.* Conferences with prospective bidders or offerors may be required after specifications have been prepared. The date and time for such conferences will be detailed in the invitation to bid or request for proposal and will be held in sufficient time for the county to respond to issues raised at such conferences prior to the time set for the receipt of bids or proposals.

(g) *Cancellation, rejection of bids or proposals; waiver of informalities.*

- (1) Any invitation to bid or request for proposal may be canceled or rejected. The reasons for cancellation or rejection shall be made part of the contract file.
- (2) The county may waive informalities in bids.

(h) *Multiterm contracts.*

- (1) Unless otherwise provided by law, a contract for goods, services or insurance may be entered into for any period of time deemed to be in the best interests of the county provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.
- (2) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled.

(i) *Contract modification.* A contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five (25) percent of the amount of the contract or ten thousand dollars (\$10,000.00), whichever is greater, without the advance approval of the board of supervisors. In no event may the amount of any contract, without adequate consideration, be increased

for any purpose, including, but not limited to, relief of an offer or bidder from the consequences of an error in its offer or bid.

(P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-101. Competitive sealed bidding.

- (a) *Notice of invitation to bid.*
 - (1) Notice inviting bids shall be published at least once in a newspaper having general circulation in the county, at least ten (10) days preceding the last day set for the receipt of bids.
 - (2) The newspaper notice required herein shall include a general description of the articles to be purchased or sold, shall state where bid documents and specifications may be secured, and the time and place for opening bids.
 - (3) The purchasing agent shall also solicit sealed bids from all responsible prospective suppliers who have requested their names to be added to a "bidders' list," by sending other notice as will acquaint them with the proposed purchase or sale. In any case, invitations sent to the vendors on the bidders' list shall be limited to commodities that are similar in character and ordinarily handled by the trade group to which the invitations are sent.
 - (4) The purchasing agent shall also advertise all pending purchases or sales by notice posted on the public bulletin board in a designated public area.
- (b) *Bid bonds on construction contracts.*
 - (1) Except in cases of emergency, all bids or proposals for construction contracts in excess of one hundred thousand dollars (\$100,000.00) shall be accompanied by a bid bond from a surety company selected by the bidder which is legally authorized to do business in Virginia, as a guarantee that if the contract is awarded to such bidder, that bidder will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five (5) percent of the amount bid.
 - (2) No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.
 - (3) Nothing in this section shall preclude the purchasing agent from requiring a bid bond for construction contracts of one hundred thousand dollars (\$100,000.00) or less.
- (c) *Bonds for other than construction contracts.*
 - (1) At the discretion of the purchasing agent, bidders may be required to submit with their bid a bid bond from a surety company selected by the bidder which is legally authorized to do business in Virginia in an amount not to exceed five (5) percent of the amount bid, which shall be forfeited to the county as liquidated damages upon the bidder's failure to execute a contract awarded to him or upon the bidder's failure to furnish any required performance or payment bonds in

connection with a contract awarded to him.

- (2) The purchasing agent may require a successful bidder to furnish a performance bond or a payment bond, or both, at the expense of the successful bidder, in amounts to be determined by the county and specified in the invitation to bid, to ensure the satisfactory completion of the work for which a contract is awarded.

(d) *Bid opening.* Sealed bids shall be submitted to the purchasing agent and shall be identified on the envelope as required in the bid specification. Bids shall be opened and announced in public at the time and place stated in the invitation to bid. A tabulation of all bids received shall be maintained for public inspection.

- (e) *Withdrawal of bid due to error.*

- (1) A bidder for a construction contract may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

- (2) The procedure for withdrawal of a bid, which must be stated in the advertisement for bids, is as follows: The bidder shall submit to the county his original work papers, documents and materials used in the preparation of the bid within one (1) day after the date fixed for submission of bids. The work papers shall be delivered by the bidder in person or by registered mail at or prior to the time fixed for the opening of bids. Such workpapers, documents, and materials may be considered as trade secrets or proprietary information subject to the conditions of section 2-100(b). The bids shall be opened one (1) day following the time fixed by the county for the submission of bids. Thereafter, the bidder shall have two (2) hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the county until the two-hour period has elapsed. Such mistake shall be proved only from the original work papers, documents and materials delivered as required herein.

- (3) Procedures for the withdrawal of bids for other than construction contracts may be established by the purchasing agent.

- (4) No bid may be withdrawn under this section when the result would be the awarding of the contract to the same bidder or to any other bidder in which the withdrawing bidder has more than five (5) percent interest.

- (5) If a bid is withdrawn under the authority of this section the next lowest responsible and responsive bid shall be deemed to be the low bid.

- (6) No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or

labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

- (7) If the board of supervisors denies the withdrawal of a bid under the provisions of this section, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.

(f) *Bid evaluation.* Evaluation of bids based upon the requirements set forth in the invitation, may include special qualifications of potential contractors, life cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.

- (g) *Bid award.*

- (1) Bids shall be awarded by the board of supervisors to the lowest responsive and responsible bidder, except in the case of small purchases which are awarded as provided for under section 2-106. When the terms and conditions of multiple bids are so provided in the invitation to bid, awards may be made to more than one (1) bidder.

- (2) Unless cancelled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the county may negotiate with the apparent low bidder to obtain a contract price within available funds; however such negotiation may be undertaken only under the conditions and procedures described in writing and approved by the board of supervisors prior to the issuance of the invitation to bid and summarized therein.

- (h) *Tie bids.*

- (1) In the event that there are two (2) or more low responsive bids which are the same total amount or unit price, quality and service being equal, the contract shall be awarded to a local bidder, if such is one of the bidders.

- (2) In the event that there are more than one (1) or no local bidders who submit tie bids, the tie bidders may be invited to resubmit written bids below the original bids. Award shall be made to the bidder with the lowest responsive bid.

- (3) In the event that the tie bid cannot be resolved by the foregoing provisions of this section, the tie shall be decided by lot. Records shall be kept of any proceeding connected with tie bids.

(i) *Multistep sealed bidding.* When it is impractical to initially prepare a purchase description to support an award based on price, an invitation to bid may be issued requesting the submission of unpriced offers to be followed by an invitation to bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

- (j) *Contract pricing arrangement.*

- (1) Except as prohibited herein, contracts may be awarded on a fixed price or cost reimbursement basis, or on any other basis that is not prohibited.
- (2) Except in case of emergency affecting the public health, safety or welfare, no contract shall be awarded on the basis of cost plus a percentage of cost. A policy or contract of insurance of prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims, shall not be prohibited by this section.
- (k) *Retainage on contracts.*

- (1) a.

In any contract for construction which provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five (95) percent of the earned sum when payment is due, with not more than five (5) percent being retained to assure faithful performance of the contract. All amounts withheld may be included in the final payment.

- b. Any subcontract for a project which provides for similar progress payments shall be subject to the same limitations.
- (2) Other than construction contracts. The purchasing agent may establish retainage on other than construction contracts. Such retainage shall afford sufficient protections for the county.
- (3) Deposit of certain retained funds on certain contracts; penalty for failure to timely complete.
 - a. Any contract of two hundred dollars (\$200,000) or more for the construction of highways, roads, streets, bridges, parking lots, demolition, clearing, grading, excavating, paving, pile driving, miscellaneous drainage structures, and the installation of water, gas, sewer lines and pumping stations where portions of the contract price are to be retained, shall include in the invitation to bid an option for the contractor to use an escrow account procedure for the utilization of the county's retainage funds by so indicating in the space provided in bid documents. In the event the contractor elects to use the escrow account procedure, the "escrow agreement" form included in the invitation to bid and contract shall be executed and submitted to the county within fifteen (15) calendar days after notification. If the "escrow agreement" form is not returned within this fifteen-day period, the contractor shall forfeit his rights to the use of the escrow account procedure.
 - b. In order to have the retained funds paid to an escrow agent, the contractor, the escrow agent, and the surety shall execute an "escrow agreement" form. The contractor's escrow agent shall be a trust company, bank or savings institution with its principal office located in the commonwealth.
 - c. This section shall not apply to contracts for the construction or maintenance of solid waste or recycling facilities and treatment plants.

- d. The county may require the contractor, exclusive of reasonable circumstances beyond the control of the contractor stated in the contract, to pay a specified penalty for each day exceeding the completion date stated in the contract.
- e. Any subcontract for such public project which provides for similar progress payments shall be subject to the provisions of this section.

(1) *Performance and payment bonds.*

- (1) Upon the award of any construction contract exceeding one hundred thousand dollars (\$100,000.00) awarded to any prime contractor, such contractor shall furnish to the county the following bonds:

- a. A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract.
- b. A payment bond in the sum of the contract amount. Such bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in the prosecution of the work provided for in such contract, and shall be conditioned upon the prompt payment for all such material furnished or labor supplied or performed in the prosecution of the work. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

- (2) Each of such bonds shall be executed by one (1) or more surety companies selected by the contractor which are legally authorized to do business in Virginia.
- (3) Bonds shall be made payable to the county.
- (4) Each of the bonds shall be filed with the county.
- (5) Nothing in this section shall preclude the county from requiring payment or performance bonds, or both, for construction contracts of one hundred thousand dollars (\$100,000.00) or less.
- (6) Nothing in this section shall preclude such contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts which are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.

(m) *Action on performance bond.* No action against the surety on a performance bond shall be brought unless within one (1) year after (i) completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty, if the action be for such, in all other cases.

(n) *Actions on payment bonds.*

- (1) Subject to the provisions of subsection (2) hereof, any claimant who has performed labor or furnished materials in accordance with the contract for which a payment bond has been given, and who has not been paid in full therefor before the expiration of ninety (90) days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which he claims payment, may bring an action on such payment bond to recover any amount due him for such labor or material, and may prosecute such action to final judgment and have execution on the judgment. The obligee named in the bond need not be named a party to such action.
- (2) Any claimant who has a direct contractual relationship with any subcontractor from whom the contractor has not required a subcontractor payment bond under subsection (1) of this section but who has no contractual relationship, express or implied, with such contractor, may bring an action on the contractor's payment bond only if he has given written notice to such contractor within one hundred eighty (180) days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Any claimant who has a direct contractual relationship with a subcontractor from whom the contractor has required a subcontractor payment bond under subsection (1) but who has no contractual relationship, express or implied, with such contractor, may bring an action on the subcontractor's payment bond. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainage with respect to labor performance or materials furnished, shall not be subject to the time limitations stated in this subsection.
- (3) Any action on a payment bond must be brought within one (1) year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.

(o) *Alternative forms of security.*

- (1) In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.
- (2) If approved by the county attorney, a bidder may furnish a bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the county equivalent to the corporate surety's bond.

(p) *Workers' compensation requirements for construction contractors and subcontractors.*

- (1) No contractor shall perform work on a construction project unless he (i) has obtained, and continues to maintain for the duration of such work, such workers' compensation coverage as may be required pursuant to the provisions of Chapter 8 (section 65.2-800 et. esq.) of Title 65.2 of the Code of Virginia, as amended and (ii) provides prior to the award of contract on a form

furnished by the county evidence of such coverage.

- (2) No subcontractor shall perform any work on a construction project unless he has obtained, and continues to maintain for the duration of such work, such workers' compensation coverage as may be required pursuant to the provisions of Chapter 8 (section 65.2-800 et. seq.) of Title 65.2 of the Code of Virginia, as amended.

(P.C. Ord. No. 83-1, § 401.00, 1-10-83; P.C. Ord. No. 84-4, 7-25-84; P.C. Ord. No. 85-9, 9-11-85; P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-102. Competitive negotiation.

(a) *Definition.* Competitive negotiation is a method of source selection which involves individual discussions between the county and the offeror on the basis of responses to the request for proposal. The source selection method of competitive negotiation incorporates section 2-100 in addition to the provisions outlined in this section and section 2-103.

- (b) *Conditions for use.*

- (1) Upon a determination made in advance by the board of supervisors and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public; then goods, services, or insurance, may be procured by competitive negotiation. The writing shall document the basis for this determination.
- (2) Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the board of supervisors and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:
 - a. On a fixed price design-build basis or construction management basis as provided under section 11-41.2.2 of the Code of Virginia, as amended.
 - b. For the alteration, repair, renovation or demolition of buildings when the contract is not expected to cost more than five hundred thousand dollars (\$500,000.00); or
 - c. For the construction of highways and draining, dredging, excavating, grading or similar work upon real property.

(c) *Request for proposal.* A request for proposal shall be in writing and indicate in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor.

(d) *Public notice.* At least ten (10) days prior to the date set for receipt of proposals, public notice shall be given by posting in a public area normally used for posting of public notices and by publication in a newspaper of general circulation in the area in which the contract is to be performed, or both. In addition,

proposals may be solicited directly from potential contractors.

(e) *Evaluation factors and award.* The county shall select two (2) or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the request for proposal, including price if so stated in the request for proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the board of supervisors shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. Should the board of supervisors determine in writing and in its sole discretion that only one (1) offeror is fully qualified, or that one (1) offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

(P.C. Ord. No. 83-1, § 402.00, 1-10-83; P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-103. Contracting for professional services by competitive negotiation.

(a) *Authority.* Professional services shall be procured by competitive negotiation. This process incorporates sections 2-101 and 2-102(c) and (d).

(b) *Discussion and award.* The county shall engage in individual discussions with two (2) or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project as well as alternative concepts. At the discussion stage, the county may discuss nonbinding estimates of total project costs, including, but not limited to, life cycle costing, and, where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussions, outlined herein, on the basis of evaluation factors published in the request for proposal and all information developed in the selection process to this point, the board of supervisors shall select in the order of preference two (2) or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the county can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the governing body determine in writing and in its sole discretion that only one (1) offeror is fully qualified, or that one (1) offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

(c) *Small purchases.* Any purchase, under this section, not expected to exceed thirty thousand dollars (\$30,000.00) may be procured without competitive negotiation; provided however that such purchases shall provide for competition whenever practicable.

(P.C. Ord. No. 83-1, § 403.00, 1-10-83; P.C. Ord. No. 84-4, 7-25-84; P.C. Ord. No. 85-9, 9-11-85; P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-104. Sole source procurement.

Upon a determination in writing that there is only one (1) source practicably available for that which is

to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination.

The county shall issue a written notice stating that only one (1) source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the governing body awards or announces its decision to award the contract, whichever occurs first.

(P.C. Ord. No. 83-1, § 404.00, 1-10-83; P.C. Ord. No. 85-9, 9-11-85; P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-105. Emergency purchases.

(a) In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The county shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a duly designated public area or published in a newspaper of general circulation on the day the governing body awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable.

(b) An emergency shall be deemed to exist when:

(1) A breakdown in machinery or equipment causes a threatened termination of essential services or a dangerous condition to develop;

(2) Any unforeseen circumstances arise causing curtailment or diminution of an essential service; or

(3) Materials or services are needed to prevent loss of life or property.

(P.C. Ord. No. 83-1, § 405.00, 1-10-83; P.C. Ord. No. 85-9, 9-11-85; P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-106. Small purchases.

Any purchase not exceeding thirty thousand dollars (\$30,000.00) may be acquired with small purchase procedures; provided, however, that contract requirements shall not be artificially divided so as to constitute a small purchase under this section. Procedures to be used when purchasing under this section are as follows:

(1) Purchases of less than thirty thousand dollars (\$30,000.00) but more than ten thousand dollars (\$10,000.00). Any purchase estimated to cost less than thirty thousand dollars (\$30,000.00) but more than ten thousand dollars (\$10,000.00) shall be made by sealed bid. All purchases shall be awarded on the basis of the lowest responsive and responsible bid. The purchasing agent shall solicit bids by direct mail request to prospective vendors or suppliers or by telephone inquiry, and by public notice posted on a bulletin board in a duly designated public area. The purchasing agent shall keep a record of all bids submitted in competition thereon, and such records shall be open to public inspection.

(2) Purchases of less than ten thousand dollars (\$10,000.00).

- a. Except as hereinafter qualified, any purchase estimated to cost less than ten thousand dollars (\$10,000.00) may be made by methods other than sealed bids. All purchases shall be awarded on the basis of the quotation most advantageous to the county. The purchasing agent shall solicit quotations by direct mail request to prospective vendors or suppliers or by telephone inquiry. Reasonable efforts shall be made to obtain a minimum of three (3) quotations for each purchase.

The purchasing agent shall keep a record of all purchases and the quotations submitted, and such records shall be open to public inspection.

- b. The purchasing agent may, in his discretion, make purchases of less than one thousand dollars (\$1,000.00) without obtaining bids or quotations; provided, such purchases are made on the basis of one (1) of the following requirements:
 1. That the cost of the items purchased be the lowest of the supplier's current price lists on file in the office of the purchasing agent;
 2. That it be known by the purchasing agent that all competitors have the same price for the items to be purchased; or
 3. That the purchase of less than one thousand dollars (\$1,000.00) is a reorder of commodities purchased on a previous bid or part thereof obtained within six (6) months prior to the proposed purchase.
- c. Purchases of less than five hundred dollars (\$500.00) shall be exempt from competitive bidding procedures.

(P.C. Ord. No. 83-1, § 406.00, 1-10-83; P.C. Ord. No. 85-9, 9-11-85; P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-107. Exceptions to requirements for competitive procurement.

The following are excepted from competitive procurement requirements:

- (1) Purchases from the Commonwealth of Virginia, or any political subdivision thereof.
- (2) Expert witnesses, and other services associated with actual or potential litigation, or regulatory proceedings.
- (3) Federal surplus property.
- (4) Purchases under contracts awarded by the Commonwealth of Virginia Department of Purchases and Supply.
- (5) Purchases for special police work when the county sheriff certifies to the purchasing agent that the items are needed for undercover police operations.

- (6) Extension of the term of an existing contract for services to allow the completion of any work undertaken but not completed during the original term of the contract.
- (7) An industrial development authority may enter into contracts without competition with respect to any item of cost of "authority facilities" or "facilities" as defined in section 15.1-1374(d) and (e), Code of Virginia, 1950, as amended.
- (8) Legal services.
- (9) Any public body administering public assistance programs as defined in section 63.87, Code of Virginia, 1950, as amended, or the fuel assistance program may procure goods or personal services for direct use by the recipients of such programs without competitive sealed bidding or competitive negotiations.
- (10) Contracts for insurance if purchased through an association of which the county is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance by use of competitive principles and provided that the county has made a reasonable determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public.
- (11) Upon determination made in advance by the county and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interest of the public, such items may be purchased at the auction.
- (12) Contracts for essential election materials and services.

(P.C. Ord. No. 83-1, § 407.00, 1-10-83; P.C. Ord. No. 85-9, 9-11-85; P.C. Ord. No. 97-15, 8-27-97)

Secs. 2-108--2-112. Reserved.

DIVISION 5.

DISPOSAL OF SURPLUS PROPERTY

Sec. 2-113. Procedure.

- (a) All using agencies shall submit to the purchasing agent at such time and in such form as he shall prescribe, reports showing stocks of all supplies which are no longer used or which have become obsolete, worn out or scrapped.
- (b) The purchasing agent shall have the authority to transfer surplus stock to other using agencies.
- (c) The purchasing agent shall have the authority, with the approval of the board of supervisors, to sell or otherwise dispose of all supplies which are unsuitable for public use, or to exchange the same for, or

trade in the same on, new supplies.

(d) Sales under this section shall be made by competitive bid whenever feasible to obtain the highest prices. The purchasing agent may require sealed bids at his discretion.
(P.C. Ord. No. 83-1, § 501.00, 1-10-83; P.C. Ord. No. 97-15, 8-27-97)

Secs. 2-114--2-120. Reserved.

DIVISION 6.

DEBARMENT OR SUSPENSION

Sec. 2-121. Authority.

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the board of supervisors, after consulting with the county attorney, is authorized to debar a person for cause from consideration for award of contracts. The debarment shall be for a period of not more than three (3) years. After consultation with the county attorney, the board of supervisors is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall not be for a period exceeding three (3) months. The causes for debarment include:

- (1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- (2) Conviction under state and federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a contractor;
- (3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- (4) Violation of contract provisions, as set forth below, of a character which is regarded by the governing body to be so serious as to justify debarment action:
 - a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - b. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of any bidding procedures or one (1) or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
- (5) Any other cause the governing body determines to be so serious and compelling as to affect

responsibility as a contractor including debarment by another governmental entity for any cause in this article and for violation of the ethical standards set forth in this article.
(P.C. Ord. No. 83-1, § 701.00, 1-10-83; Amend. of 2-28-83; P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-122. Issuance of written decision.

The county shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of his rights concerning judicial or administrative review.
(P.C. Ord. No. 83-1, § 702.00, 1-10-83; P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-123. Notice of decision.

A copy of the decision required by section 2-122 shall be mailed or otherwise furnished immediately to the debarred or suspended person.
(P.C. Ord. No. 83-1, § 703.00, 1-10-83; P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-124. Finality of decision.

A decision under section 2-122 shall be final and conclusive, unless the debarred or suspended person, within ten (10) days after receipt of the decision, takes an appeal to the board of supervisors or commences a timely action in court in accordance with applicable law.
(P.C. Ord. No. 83-1, § 704.00, 1-10-83; P.C. Ord. No. 97-15, 8-27-97)

Secs. 2-125--2-130. Reserved.

DIVISION 7.

APPEALS AND REMEDIES FOR BID PROTESTS

Sec. 2-131. Ineligibility of bidder, offeror or contractor.

(a) Any bidder, offeror, or contractor refused permission to, or disqualified from, participating in contracts shall be notified in writing. Such notice shall state the reasons for the action taken. This decision shall be final unless the bidder, offeror, or contractor appeals within thirty (30) days of receipt by instituting a legal action as provided in section 2-138.

(b) If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes or regulations, the sole relief shall be restoration of eligibility.
(P.C. Ord. No. 83-1, § 801.00, 1-10-83; P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-132. Appeal of denial of withdrawal of bid.

(a) A decision denying withdrawal of bid under the provisions of section 2-100(l) shall be final and conclusive unless the bidder appeals the decision within ten (10) days after receipt of the decision by instituting

legal action as provided in section 2-138.

(b) If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of section 2-100(1), prior to appealing, shall deliver to the purchasing agent a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next lowest bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

(c) If, upon appeal, it is determined that the decision refusing withdrawal of the bid was arbitrary or capricious, the sole relief shall be withdrawal of the bid.
(P.C. Ord. No. 83-1, § 802.00, 1-10-83; P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-133. Determination of nonresponsibility.

(a) Following public opening and announcement of bids received on an invitation to bid, the county shall evaluate the bids in accordance with section 2-101(f). At the same time, the county shall determine whether the apparent low bidder is responsible. If the county so determines, then it may proceed with an award in accordance with Section 2-101(g). If the county determines that the apparent low bidder is not responsible, it shall proceed as follows:

- (1) Prior to the issuance of a written determination of nonresponsibility, the county shall (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents which relate to the determination, if so requested by the bidder within five (5) business days after receipt of the notice.
- (2) Within ten (10) business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The county shall issue its written determination of responsibility based on all information in the possession of the county, including any rebuttal information, within five (5) business days of the date the county received such rebuttal information. At the same time, the county shall notify the bidder in writing of its determination. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) days by instituting legal action as provided in section 2-138.
- (3) The provisions of this section shall not apply to procurements involving the prequalification of bidders and the rights of any potential bidders under such prequalification to appeal a decision that such bidders are not responsible.

(b) If, upon appeal, it is determined that the decision of the county was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the invitation to bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question. If it is determined that the decision of the county was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the invitation to bid, and the bid has been awarded, the relief shall be as set forth in section 2-134.

(c) A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under section 2-134.

(d) Nothing contained in this section shall be construed to require the county, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

(P.C. Ord. No. 83-1, § 803.00, 1-10-83; P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-134. Protest of award or decision to award.

(a) Any bidder or offeror may protest the award or decision to award a contract by submitting such protest in writing to the governing body, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The governing body shall issue a decision in writing within thirty (30) days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten (10) days of the written decision by instituting legal action as provided in section 2-138. Nothing in this section shall be construed to permit a bidder to challenge the validity of the terms or conditions of the invitation to bid or request for proposal.

(b) If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The county shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the governing body may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

(c) Where the board of supervisors determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of Division 9 of this article, the board of supervisors may enjoin the award of the contract to a particular bidder.

(P.C. Ord. No. 83-1, § 804.00, 1-10-83; P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-135. Effect of appeal upon contract.

Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this article shall not be affected by the fact that a protest or appeal has been filed.

(P.C. Ord. No. 83-1, § 805.00, 1-10-83; P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-136. Stay of award during protest.

An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest, as provided in section 2-134, or the filing of timely legal action as provided in section 2-138, no further action to award the contract will be taken unless there is a written determination that proceeding without

delay is necessary to protect the public interest or unless the bid or offer would expire.
(P.C. Ord. No. 83-1, § 806.00, 1-10-83; P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-137. Contractual disputes.

(a) Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment; however, written notice of the contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

(b) A procedure for consideration of contractual claims shall be included in each contract. Such procedure, which may be incorporated into the contract by reference, shall establish a time limit for a final decision in writing by the board of supervisors.

(c) A contractor may not institute legal action as provided in section 2-138 prior to receipt of the decision on the claim, unless the board of supervisors fails to render such decision within the time specified in the contract.

(d) The decision of the board of supervisors shall be final and conclusive unless the contractor appeals within six (6) months of the date of the final decision on the claim by the board of supervisors by instituting legal action as provided in section 2-138.

(P.C. Ord. No. 83-1, § 807.00, 1-10-83; P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-138. Legal actions.

(a) A bidder or offeror, actual or prospective, who is refused permission or disqualified from participating in bidding or competitive negotiation, or who is determined not to be a responsible or responsive bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner established that the decision was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the invitation to bid, or, in the case of denial of prequalification, that the decision to deny prequalification was not based upon the criteria for denial of prequalification set forth in section 2-100(d)1.b. In the event the apparent low bidder, having been previously determined by the public body to be not responsible in accordance with section 2-133, is found by the court to be a responsible bidder, the court may direct the public body to award the contract, forthwith, to such bidder in accordance with the requirements of this section and the invitation to bid. The provisions of section 2-134(b) shall apply to any such award directed by the court.

(b) A bidder denied withdrawal of a bid under section 2-101(e) may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the county was clearly erroneous.

(c) A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source in the manner provided in section 2-104, or emergency basis in the manner provided in section 2-105,

whose protest of an award or decision to award under section 2-134 is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not an honest exercise of discretion, but rather is arbitrary or capricious or not in accordance with the Constitution of Virginia, statutes, regulations or in the terms and conditions of the invitation to bid or request for proposal.

(d) If injunctive relief is granted, the court, upon request of the county shall require the posting of reasonable security to protect the county.

(e) A contractor may bring an action involving a contract dispute with the county in the appropriate circuit court.

(f) Nothing herein shall be construed to prevent the county from instituting legal action against a contractor.

(P.C. Ord. No. 83-1, § 808.00, 1-10-83; P.C. Ord. No. 97-15, 8-27-97)

Secs. 2-139--2-145. Reserved.

DIVISION 8.

DISCRIMINATION

Sec. 2-146. Prohibited.

In the solicitation or awarding of contracts, the county shall not discriminate because of race, religion, color, sex, or national origin of the bidder or offeror. Whenever solicitations are made, the county shall include businesses selected from a list made available by the Department of Minority Business Enterprises.

(P.C. Ord. No. 83-1, § 901.00, 1-10-83; P.C. Ord. No. 84-4, 7-25-84; P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-147. Participation of small businesses and businesses owned by women and minorities.

The county shall establish a program consistent with all provisions of this chapter to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. Such programs shall be in writing, and shall include cooperation with the State Department of Minority Business Enterprise, the United States Small Business Administration, and other public or private agencies.

(P.C. Ord. No. 84-4, 7-25-84; P.C. Ord. No. 97-15, 8-27-97)

Secs. 2-148--2-150. Reserved.

DIVISION 9.

ETHICS IN PUBLIC CONTRACTING

Sec. 2-151. Purpose.

The provisions of this division supplement, but do not supersede, other provisions of law including, but

not limited to, the State and Local Government Conflict of Interests Act, the Virginia Governmental Frauds Act, and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended. The provisions of this division apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interest Act.

(P.C. Ord. No. 83-1, § 1001.00, 1-10-83; P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-152. Proscribed participation by employees in procurement transactions.

Except as may be specifically allowed by subdivisions A-2 and A-3 of section 2.1-639.11, Code of Virginia, as amended, no public employee having official responsibility for a procurement transaction shall participate in the transaction on behalf of the governing body when the employee knows that:

- (1) The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction;
- (2) The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five (5) percent;
- (3) The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or
- (4) The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning prospective employment with a bidder, offeror or contractor.

(P.C. Ord. No. 83-1, § 1002.00, 1-10-83; P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-153. Solicitation or acceptance of gifts.

No public employee having official responsibility for a procurement transaction shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. The county may recover the value of anything conveyed in violation of this section.

(P.C. Ord. No. 83-1, § 1003.00, 1-10-83; P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-154. Disclosure of subsequent employment.

No public employee or former public employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the county unless the employee, or former employee, provides written notification to the governing body prior to commencement of employment by that bidder, offeror or contractor.

(P.C. Ord. No. 83-1, § 1004.00, 1-10-83; P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-155. Gifts by bidders, offerors, contractors or subcontractors.

No bidder, offeror, contractor or subcontractor shall confer upon any employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

(P.C.Ord. No. 83-1, § 1005.00, 1-10-83; P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-156. Kickbacks.

(a) No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.

(b) No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.

(c) No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a public contract.

(d) If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the county and will be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

(P.C. Ord. No. 83-1, § 1006.00, 1-10-83; P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-156.1. Participation in bid preparation; limitation on submitting bid for same procurement.

No person who, for compensation, prepares an invitation to bid or request for proposal for or on behalf of the county shall (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement which is not available to the public. However, the county may permit such person to submit a bid or proposal for that procurement or any portion thereof if the county determines that the exclusion of such person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the county.

(P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-157. Purchase of building materials, etc., from architect or engineer prohibited.

Except in cases of emergency, no building materials, supplies or equipment for any building or structure constructed by or for the county shall be sold by or purchased from any person employed as an independent contractor by the county to furnish architectural or engineering services, but not construction, for such building or structure, or from any partnership, association or corporation in which such architect or engineer has a pecuniary interest.

(P.C. Ord. No. 83-1, § 1007.001, 1-10-83; P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-157.1. Misrepresentations prohibited.

No public employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry.
(P.C. Ord. No. 97-15, 8-27-97)

Sec. 2-158. Penalty for violation.

Willful violation of any provision of this division shall constitute a Class I misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided in section 2-74, shall forfeit his employment.
(P.C. Ord. No. 83-1, § 1008.00, 1-10-83; P.C. Ord. No. 97-15, 8-27-97)

ARTICLE XI.

EMPLOYMENT OF OFF-DUTY DEPUTY SHERIFFS

Sec. 2-159. Authorization.

Pursuant to authorization contained in the Code of Virginia, 1950, as amended, the sheriff of Rockingham County may permit the employment of off-duty deputy sheriffs in certain instances where the use of police powers may occasionally be required in the performance of such employment.
(P.C. Ord. No. 18-86, 11-12-86)

Sec. 2-160. Rules and regulations.

The sheriff of Rockingham County shall promulgate rules and regulations to apply to such off-duty employment. The rules and regulations shall specifically state those certain instances in which employment of off-duty deputy sheriffs is authorized.
(P.C. Ord. No. 18-86, 11-12-86)

Sec. 2-161. Payment of off-duty deputy sheriffs.

In the promulgation of the rules and regulations the sheriff shall establish same to assure that the payment of such off-duty employment shall be borne, in full, by the person, firm or corporation engaging such employment and shall not cause any financial liability to the county or the commonwealth due to such employment.
(P.C. Ord. No. 18-86, 11-12-86)

ARTICLE XII.

SYSTEM FOR NUMBERING PROPERTIES

Sec. 2-162. Establishment of numbering system.

This article shall establish a uniform, county-wide address numbering system for numbering all dwellings, buildings and other habitable structures in Rockingham County and assignment of street addresses on all streets, roads and alleys in the county when named. Property shall be numbered in accordance with the provisions set forth in this article.

(P.C. Ord. No. 9-92, 6-92)

Sec. 2-163. Administration and interpretation.

(a) The director of public works or his designee is hereby designated as the agent responsible for the administration, implementation and enforcement of this article.

(b) The agent shall establish street address numbers in accordance with the guidelines set forth in this article.

(c) No building permit shall be approved until a street address number has been determined and assigned as herein provided.

(d) No certificate of occupancy shall be issued until the assigned address number has been posted as herein provided. The property owner shall be responsible for affixing the assigned address number and removing any different address number if present. The initial cost and continued maintenance of address numbers shall be the responsibility of the property owner.

(e) Henceforth, street addresses shall be assigned as provided herein by the agent to each lot or parcel shown on each subdivision plat after final approval of same, and a copy of the numbers assigned shall be maintained by the agent.

(P.C. Ord. No. 9-92, 6-92)

Sec. 2-164. Determination of street address numbers.

Street address numbers shall be assigned in accordance with the guidelines set forth in this article unless, in the opinion of the agent, the interests of the citizens of Rockingham County are better served by minor modifications to the system or when the circumstances dictate adjustments.

(P.C. Ord. No. 9-92, 6-92)

Sec. 2-165. Size and location of street address numbers.

(a) Street address numbers for a residence shall not be less than four (4) inches in height and shall be made of a durable and clearly visible material. The numbers shall be conspicuously placed on, above or at the side of the main entrance of the structure so that the number is discernible from the street. Whenever a structure is more than fifty (50) feet from the street right-of-way or seventy-five (75) feet from the street center line, when no right-of-way exists, or when the entrance to the structure is not visible from the street, the number shall also be placed along a walk, driveway, or another suitable location so that the address number is discernible from the street.

(b) Street address numbers or letters shall be of contrasting color to the background on which they are mounted.

(c) All commercial and industrial structures shall display street address numbers of not less than eight (8) inches in height as follows:

- (1) When possible, the number shall be displayed over the main entrance to the structure.
- (2) There shall be no other wording or numbers within two (2) feet of the building number.
- (3) Apartments, townhouses, shopping centers or other similar groupings where only one (1) number is assigned shall display such a number at the main entrance way. Said address numbers shall have a minimum height of eight (8) inches. Numbers for individual units or establishments within the complex shall be displayed on, above or to the side of the main doorway of each unit or establishment.

(P.C. Ord. No. 9-92, 6-92)

Sec. 2-166. Enforcement/penalties.

(a) Upon receipt of written notification designating a property address, the property owner shall have six (6) months from receipt of said notification to post the house numbers in accordance with section 2-165 above.

(b) Whenever the agent has reason to believe there has been a violation of any provision of this article, he shall give notice of such violation to the person failing to comply and order said person to take corrective measures within thirty (30) days from the date of notification.

(c) If such person fails to comply with the duly issued notice, the agent shall initiate necessary actions to terminate the violation through criminal and or civil measures.

(d) Any violation of any provision of this article shall constitute a Class 4 misdemeanor. Subsequent to the thirty-day period following notification of violation, each day of violation shall constitute a separate violation.

(P.C. Ord. No. 9-92, 6-92)

Sec. 2-167. Effective date.

This article shall become effective upon implementation of the structure numbering system, which may be accomplished in phases, as determined by the board of supervisors.

(P.C. Ord. No. 9-92, 6-92)

ARTICLE XIII.

CONCEALED HANDGUN PERMIT

Sec. 2-168. Fingerprinting and further information.

Pursuant to authorization contained in section 18.2-308 of the Code of Virginia, 1950, as amended, as a

condition for issuance of a concealed handgun permit, the applicant for such permit shall submit to fingerprinting and shall provide personal descriptive information as may be required by the county or either of the hereinafter described agencies, to be forwarded with the fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant, and obtaining fingerprint identification information from federal records pursuant to criminal investigations by state and local law-enforcement agencies. This requirement shall be in addition to all other statutory requirements. The local agency responsible for collecting the fingerprints from such applicants shall be the sheriff's office of the county.

(P.C. Ord. No. 97-8, 7-1-97)

Sec. 2-169. Disposition.

Upon completion of the criminal history records check and consideration of other statutory matters, the permit will be either issued or refused. Thereafter, upon receipt of the fingerprint cards by the sheriff, the sheriff shall then notify the applicant that he has twenty-one (21) days from the date of the notice to request return of the fingerprint cards. All fingerprint cards not claimed by such applicant within twenty-one (21) days of such notification by the sheriff shall be destroyed. In addition, if such applicant is later found by the court issuing the aforesaid concealed handgun permit to be disqualified, the permit shall be revoked.

(P.C. Ord. No. 97-8, 7-1-97)